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IN THE

Supreme Court of the United States

October Term, 1957

No. 822

PAUL S. WOOLLEY, *Petitioner,*

—v.—

EASTERN AIR LINES, INC., *et al., Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS EASTERN AIR LINES, INC., S. L. SHANNON AND GEORGE A. SMITH IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Statement of the Case

The petition for writ of certiorari contains a statement of facts which is, in many respects, confusing and misleading, and which is mixed with argument to such a degree that a brief restatement of the facts and issues appears essential.

Woolley was employed by Eastern as a pilot for a number of years prior to February 20, 1956 (R. 9).

In 1950 Woolley was discharged by Eastern for alleged "unsafe flying practices" (R. 355-356). At the instance of Woolley's bargaining representative—the Air Line Pilots

Association (ALPA)—Eastern finally was persuaded to reinstate Woolley (reducing the disciplinary action to six months lay-off), but only on condition that he sign a letter of resignation which could be accepted by Eastern's Vice President—Operations "at any time in the future, should you personally feel that I am not handling my job in the proper manner" (R. 86, R. 6-8, R. 117-122, R. 139-143, R. 173-178).

On February 20, 1956, Eastern's Senior Vice President—Operations accepted Woolley's resignation (R. 87). Such acceptance was based on Woolley's "unsafe flying" of two flights operated February 5 and February 6, 1956, which conduct "confirms other information which has come to my attention from time to time" (R. 368).

Woolley requested and received a hearing (R. 367, 368) following which the Company's decision to accept the resignation was reaffirmed (R. 369). Woolley then appealed to the Eastern Air Lines Pilots System Board of Adjustment, specifically requesting the Board to hold "that his severance from the Company as a pilot employee on February 20, 1956, for the reasons assigned in the letter of S. L. Shannon, Senior Vice President (Exhibit 1 attached) was improper and wrongful," and requesting that "the Company be required to forthwith reinstate him as a pilot employee without loss of seniority or other conditions of employment" and that "he be reimbursed all monetary losses by him sustained because of the improper and wrongful action of the Company in the premises" (R. 363-365).

In his appeal to the Adjustment Board, Woolley alleged in effect that the Board had jurisdiction and that the dispute was "properly submitted to it," and he stated the "question at issue" to be as follows: "Did the Company properly sever the employment of Paul S. Woolley, a pilot employee, on February 20, 1956?" (R. 363).

The Adjustment Board held a hearing pursuant to Woolley's request (R. 99 *ff.*). At the hearing, Woolley's counsel stated in part as follows (R. 101):

> "First of all, we have the issue, as I understand the problem, of whether or not Mr. Woolley has, in fact, resigned his position with the Company, and the Association and Mr. Woolley take the position that he has not resigned. The basis for my statement is that notwithstanding the fact that in 1950, Mr. Woolley signed a document which purports to be a resignation to be accepted sometime in the future upon an eventuality that this document is of no legal import because it circumvents the Employment Agreement."

Woolley's counsel then argued at considerable length that the resignation should be held to be illegal and of no effect and that "this letter of resignation and its acceptance . . . is nothing more or less than a discharge of Mr. Woolley for whatever reason the Company had at the time, and that he is entitled to an investigation and hearing upon those grounds" (R. 102).

In addition to contesting the validity of the resignation, Woolley contended that Eastern had insufficient cause for discharging him. Eastern, on the other hand, contended that the resignation was valid and properly accepted and, in the alternative, that Eastern had adequate cause to discharge Woolley (R. 104).

The hearing continued for two days, and the transcript of the evidence taken at that hearing required over 200 printed pages (R. 99-339), there having been at least ten witnesses testifying in the proceeding.

The Adjustment Board—consisting of two representatives of Eastern and two representatives of the pilots in Eastern's employ—*unanimously* upheld Eastern's action, stating in part as follows (R. 88-89):

"The Board finds: 1. That the letter of resignation was given by the Grievant as part of a settlement of a previous grievance wherein he was contesting his dismissal by the Company, such settlement being negotiated by the Grievant and his representatives, officials of the Air Line Pilots Association International, on the one hand and the Company on the other hand;

"2. That the letter of resignation was given by the Grievant in good faith and was intended by all involved in the settlement to be effective and to be accepted by the Company for good and sufficient reasons but not arbitrarily or capriciously;

"3. That Grievant's resignation was accepted by the Company for good and sufficient reasons and that the Company did not act arbitrarily or capriciously in accepting Grievant's resignation; and

"4. That the Grievant's letter of resignation, having been properly accepted by the Company, terminated Grievant's employment with the Company.

"Decision of the Board: Grievance denied."

Woolley brought action in the District Court seeking, in effect, (a) a declaration by that Court as to the same issues which had been submitted to the Adjustment Board; (b) an order requiring the Adjustment Board to "cancel and discharge their order of August 1, 1956 as being entered erroneously and without jurisdiction and without probable cause"; and (c) an order of the Court directed to Eastern requiring it "to reinstate plaintiff to his full rights of seniority and other benefits provided under the contract" (R. 12-13).

After the named defendants in the action filed answers to the complaint, all parties to the action then filed in the District Court motions for summary judgment based upon the verified pleadings of record in the case (R. 341, R. 370, R. 372). Thereafter, the District Court, being of the opin-

ion that there was no genuine issue as to any material fact, entered summary judgment in favor of the defendants (R. 380), and denied the motion for summary judgment of plaintiff (R. 380, 384), upon the ground that the Court lacked authority to set aside the Board order.

The Court of Appeals for the Fifth Circuit affirmed. *Woolley* v. *Eastern Air Lines, Inc.*, 250 F. 2d 86 (Dec. 5, 1957).

Both the District Court and the Court of Appeals held, in effect, that Woolley had voluntarily invoked the jurisdiction of the Adjustment Board and was therefore bound by its decision in view of the contractual requirement (R. 83) and the provision of the Railway Labor Act (Section 3 First (m); 45 U. S. C. 153 First (m)) that decisions of the Adjustment Board shall be "final and binding". Both Courts found it unnecessary to rule whether the resignation and acceptance thereof were, standing alone, an effective termination of the employment, as both Courts "equated the finding of the Board that there was good and sufficient reason to accept the resignation with a finding that ample grounds existed for a discharge" (250 F. 2d 91), and held the decision of the Board to be conclusive.

The Court of Appeals went further and concluded that "there was sufficient competent evidence of unsafe flying on the two specific flights #644 and 647 to support not only a finding of sufficient reason for accepting the resignation, but also to support a finding of adequate grounds for discharge" (250 F. 2d 91-92).

Statutes Involved

The petition for certiorari does not set out the applicable statutory provisions as required by this Court's Rule 23. The following provisions of the Railway Labor Act are pertinent:

"Sec. 204 [Added by 49 Stat. 1189, 45 U. S. C. 184] The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

"It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act."

"Sec. 3 First [44 Stat. 578, as amended by 48 Stat. 1189, 45 U. S. C. 153]

* * * * *

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case

a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

* * * * *

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board."

ARGUMENT

I.

There is no basis for review on certiorari.

The Petitioner's claimed bases for certiorari are obviously unsupported:

(1) He asserts (Petition, p. 2) a "conflict" between the Court of Appeals decision and "the decision of the United States Court of Appeals for the District of Columbia Circuit and United States Court of Appeals, 2nd Circuit." However, as will be demonstrated hereinafter, the only decisions cited (*Edwards* v. *Capital Airlines, Inc.*, 176 F. 2d 755 (D. C. Cir. 1949) and *Rychlik* v. *Pennsylvania Railroad*, 229 F. 2d 171 (2d Cir. 1956)) are plainly inapplicable to a case such as this, where no claim has ever been made that the Adjustment Board was improperly constituted to give Woolley a fair hearing.

(2) Petitioner further asserts (Petition, p. 2) that the lower court "has decided an important question of Federal law which has not been but should be settled by this Court." Actually, the lower court decided this case on two grounds, one of which involves no question of Federal law—*i.e.*, that the decision of the Adjustment Board, if reviewable, was plainly right. The other ground of the Court of Appeals decision was that when an employee voluntarily invokes the jurisdiction of a properly constituted Adjustment Board under the Railway Labor Act to determine his employment status, the adverse decision of that Board is final and binding on him. On this issue, as will be shown hereinafter, the decisions of lower courts are numerous and *unanimous*, and are based on principles established by this Court. Hence, there is no need for this Court to "settle" the issue.

(3) Petitioner says (Petition, p. 2) that the Court of Appeals decision is in "conflict with the applicable decisions

of this Court". However, he notes no such conflict, and there is none.

(4) Petitioner's claim (Petition, p. 2) that the lower courts have "departed from the accepted and usual course of judicial proceedings" is wholly unsupported and unsupportable.

II.

Woolley was given a full and fair hearing after adequate notice of specific charges against him.

The petition for certiorari repeatedly states or implies that Woolley was handicapped in presenting his case to the Adjustment Board because he was not given "specific charges" (Petition, pp. 7-8, 10, 17, 20, 23); and suggests that he was not given a full and fair hearing. The Court of Appeals noted this suggestion (250 F. 2d 92) and held that Woolley was given adequate notice and hearing, and, furthermore, that he "waived any procedural defect" by appealing to the Board and proceeding without objection.

The record in this case shows: Woolley was served with specific charges for his dismissal, the same being unsafe flying of particular flights on specified dates (R. 368); Woolley requested a hearing, and in fact did receive a hearing before the Senior Vice President (R. 367, 368, 369, 123-126), and even made an extraordinary appeal to the Chairman of the Board of Eastern (R. 125-126). After those hearings and investigations upon the administrative level, Woolley then appealed to the Adjustment Board, submitting to that Board the question of whether or not the termination of his employment was proper (R. 363). The Board took extensive evidence, not only upon the circumstances leading to the submission of the letter of resignation, but also upon the circumstances leading to the accept-

ance by the Company of that letter of resignation. Many pages of evidence in the case related solely to the proof of the specific charges of unsafe flying served upon Woolley at the time of his dismissal (R. 99 *ff.*). These facts alone, as shown by the record, dispose of Woolley's argument in support of his specifications of error relating to the jurisdiction of the District Court to review and set aside the decision of the Adjustment Board, inasmuch as Woolley relies solely upon erroneous assumptions of fact to support his position.

III.

Woolley's action in voluntarily submitting the case to the Adjustment Board constituted an irrevocable election of the Adjustment Board remedy which precludes court action.

Woolley had two entirely inconsistent alternative courses of action which he could have followed upon being separated from his employment: (1) he could have regarded the separation as final and proceeded to court action for damages based on alleged "wrongful discharge" (*Moore* v. *Illinois Central Railroad*, 312 U. S. 630 (1941); *Michel* v. *Louisville & N. R. R.*, 188 F. 2d 224 (5th Cir. 1951), and other cases cited herein); or (2) he could claim a continuing employment relationship, demanding hearing before the Adjustment Board and seeking reinstatement with back wages.

These alternatives are mutually exclusive, not only because the first assumes that the employment relationship is at an end while the second assumes that it is continuing, but also because they *must* be pursued before different tribunals. It is obvious that the Company officers and the Adjustment Board could not and would not award damages if the plaintiff accepted his separation as final, for their

jurisdiction is over employees, not strangers. And the courts have universally held that they have no jurisdiction over the second alternative—reinstatement—since the Adjustment Board is created pursuant to act of Congress (the Railway Labor Act) for precisely the purpose of settling such matters and the courts will not interfere with the interpretation and administration of a collective bargaining contract where a continuing employment relationship is contemplated.

The essential distinction between the two alternatives is indicated by the following language from the Supreme Court's decision in *Slocum* v. *Delaware L. & W. R. R.*, 339 U. S. 239, 244-245 (1950):

> "Our holding here is not inconsistent with our holding in Moore v. Illinois Central R. Co., 312 U. S. 630, 61 S. Ct. 754, 85 L. Ed. 1089. Moore was discharged by the railway. He could have challenged the validity of his discharge before the Board, seeking reinstatement and back pay. Instead he chose to accept the railroad's action in discharging him as final, thereby ceasing to be an employee, and brought suit claiming damages for breach of contract. As we there held, the Railway Labor Act does not bar courts from adjudicating such cases. A common-law or statutory action for wrongful discharge differs from any remedy which the Board has power to provide, and does not involve questions of future relations betwen the railroad and its other employees. If a court in handling such a case must consider some provision of a collective bargaining agreement, its interpretation would of course have no binding effect on future interpretations by the Board.
>
> "We hold that the jurisdiction of the Board to adjust grievances and disputes of the type here involved is exclusive. The holding of the Moore case does not conflict with this decision, and no contrary inference should be drawn from any language in the Moore opinion."

The following are some of the additional authorities which hold specifically that actions for reinstatement (and, in some cases, even actions for back wages when combined with an action for reinstatement), and similar actions contemplating a continuing employment relationship, will not under any circumstances be entertained by the courts:

Majors v. *Thompson*, 235 F. 2d 449 (5th Cir. 1956);
Coats v. *St. Louis-San Francisco Railway*, 230 F. 2d 798 (5th Cir. 1956);
Bower v. *Eastern Air Lines*, 214 F. 2d 623 (3rd Cir. 1954), *cert. denied*, 348 U. S. 871 (1954);
Walters v. *Chicago & N. W. Ry.*, 216 F. 2d 332 (7th Cir. 1954);
Newman v. *Baltimore & O. R. R.*, 191 F. 2d 560 (3d Cir. 1951);
Broady v. *Illinois C. R. R.*, 191 F. 2d 73 (7th Cir. 1951);
Butler v. *Thompson*, 192 F. 2d 831 (8th Cir. 1951);
Van Zandt v. *Railway Express Agency*, 99 F. Supp. 520 (S. D. N. Y. 1950);
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Illinois C. R. R. v. *Brotherhood of Railway Trainmen*, 83 F. Supp. 930 (N. D. Ill. 1949);
Morelle v. *New York Central R. R.*, 19 Labor Cases 66,215 (N. D. Ohio 1951);
Buster v. *Chicago, M. & St. P. & P. R. Co.*, 195 F. 2d 73 (7th Cir. 1952);
Broome v. *Louisville & N. R. R.*, 250 S. W. 2d 93 (Tenn. 1952);
Switchmen's Union v. *Ogden Union Ry. and Depot Co.*, 209 F. 2d 419 (10th Cir. 1954);
Richardson v. *Ozark Airlines, Inc.*, 26 Labor Cases 68,571 (Mo. 1954);
Pigott v. *Detroit, T. & I. R. R.*, 116 F. Supp. 949 (E. D. Mich. 1953);
DePriest v. *Pennsylvania R. R.*, 31 Labor Cases 70,238 (D. N. J. September 19, 1956), where it was held that the Adjustment Board has exclu-

> sive jurisdiction of the interpretation of a collective agreement which might affect future relations with other employees, even though the employee involved in the particular litigation had retired; and
>
> *Barnett* v. *Pennsylvania-Reading Seashore Lines*, 245 F. 2d 579 (3d Cir. 1957).

Since the reinstatement route (appeal to the Adjustment Board) and the damages route (action in court for damages) are inconsistent and require resort to different tribunals, the courts have uniformly held that election of one route precludes subsequent resort to the other where the decision is unfavorable to the employee.

A full discussion of the principles involved and of various authorities holding that submission of a claim to the Adjustment Board constitutes a binding election of remedies is presented in *Michel* v. *Louisville & N. R. R.*, *supra*. The *Michel* case involved the claim of a former employee that he had been wrongfully discharged and his suit for reinstatement with back wages from the time of discharge to the time of reinstatement. The employee claimed that the carrier had not complied with the contractual requirements as to notice and other procedures prior to discharge. Before bringing suit, the employee had processed his claim through the entire contractual grievance procedure and had pressed it to decision by the National Railroad Adjustment Board, which had upheld the action of the carrier in discharging him. Thus, the case is entirely parallel to the instant case, and the following language of the Circuit Court of Appeals is deemed to be applicable to this case (188 F. 2d 226-227):

> "There is, however, no requirement that an employee so prosecute his claim for relief for breach of an employment agreement before the Adjustment Board. He may proceed in the first instance by suit in the

Courts to recover damages for breach of the contract. Moore v. Illinois Central R. Co., 312 U. S. 630, 61 S. Ct. 754, 85 L. Ed. 1089, and as further discussed in Slocum v. Delaware, L. & W. R. Co., supra. However, when there is a voluntary election to proceed in the manner provided by the Railway Labor Act, 45 U. S. C. A. §151 et seq., supra, and the claim pursued to a determination of the merits by the Adjustment Board, this procedure by both right and reason represents an election of remedies which bars the independent suit which was otherwise available to the claimant. This construction finds strong support in the statute, especially the provision that 'the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award * * *.' In any event, it can not be questioned that by the Act, Congress has established a forum for the settlement of such disputes to which the employee may resort if he so desires. Consequently, there would appear no reason for not enforcing in such instances the fundamental principle that where one of two inconsistent remedies are available, the election of one precludes recourse to the other. This has been the uniform holdings, correctly we think, of the Courts which have considered this question. It follows therefore that in the present case, it appearing from the uncontradicted facts that the question of whether the discharge of the appellant, Michel, was justified, on the one hand, or constituted a violation of the employment agreement on the other, has, in proceedings in effect instituted and prosecuted by appellant, been determined adversely to his contentions, he is therefore not legally entitled to maintain the present suit upon the same claim.

"It is asserted, however, that if the provisions of the statute and the award of the Adjustment Board be given the effect just indicated, then the statute is unconstitutional as evidencing a delegation of judicial power to the Adjustment Board. As we have seen, the statute provides the manner or system of procedure, as well as the finality of the result. This case presents the reverse of the question determined in Washington

Terminal Company v. Boswell, supra, and New Orleans Public Belt Railroad Comm. v. Ward, 5 Cir., 182 F. 2d 654, in that here the 'finality' is operative against the employee, but this, as shown, results from a voluntary submission of the question to the Adjustment Board. It would seem clear that the award of a body, having a function of such importance as that recourse to it is requisite even before the institution of litigation in bankruptcy (Pitney case, supra), or State (Slocum case supra) Courts, is entitled to receive the finality provided by the statute against one who voluntarily invokes its jurisdiction.

"As we view the matter, there is no occasion for any examination of the constitutional question sought to be presented, for the appellant having presented and prosecuted his claim, in the manner provided by the statute, which eventuated in an adverse award, must be held by such conduct and election to have waived the right to assail the constitutional validity of the manner and extent of redress afforded by the terms of the statute under which he proceeded. Wall v. Parrot Silver & Copper Co., 244 U. S. 407, 411, 37 S. Ct. 609, 61 L. Ed. 1229, and citations; Booth Fisheries v. Industrial Comm., 271 U. S. 208, 46 S. Ct. 491, 70 L. Ed. 908, and citations; Eliason v. Wilborn, 335 Ill. 352, 167 N. E. 101, 68 A. L. R. 350, and opinion affirming at 281 U. S. 457, 50 S. Ct. 382, 74 L. Ed. 962. We therefore do not consider the attack upon the constitutionality of the statute."

To the same effect is *Sigfred* v. *Pan American World Airways*, 230 F. 2d 13 (5th Cir. 1956), *cert. denied*, 351 U. S. 925 (1956).

A closely analogous case is *Bower* v. *Eastern Air Lines*, *supra*, in which the Court of Appeals for the Third Circuit held that an adverse decision by the same Adjustment Board involved in this case was binding on the plaintiff, and that the Court had no jurisdiction to consider his claim for reinstatement or damages.

Other cases which hold that submission of a claim to an Adjustment Board under the Railway Labor Act is an election of remedies and that the adverse decision of the Adjustment Board is binding and precludes court action are as follows:

Berryman v. *Pullman Co.*, 48 F. Supp. 542 (W. D. Mo. 1942)—an action for reinstatement with back wages;

Hargis v. *Wabash R. R.*, 163 F. 2d 608 (7th Cir. 1947)—an action to determine employee rights under a collective bargaining agreement;

Ramsey v. *Chesapeake & O. R. R.*, 75 F. Supp. 740 (N. D. Ohio 1948)—an action for reinstatement and back wages;

Kelly v. *Nashville, C. & St. L. Ry.*, 75 F. Supp. 737 (E. D. Tenn. 1948)—an action for reinstatement and back wages;

Reynolds v. *Denver & R. G. W. R. R.*, 174 F. 2d 673 (10th Cir. 1949)—an action for reinstatement and back wages;

Hecox v. *Pullman Co.*, 85 F. Supp. 34 (W. D. Wash. 1949)—an action for reinstatement and back wages;

Warmack v. *Loftin*, 19 Labor Cases 66,159 (S. D. Fla. 1951)—an action for reinstatement and back wages;

Hartley v. *Pan American Airways, Inc.*, 98 F. Supp. 247 (N. D. Cal. 1951)—an action for reinstatement and back wages;

Williams v. *Atchison, T. & S. F. Ry.*, 204 S. W. 2d 693 (Mo. Sup. Ct. 1947)—an action to determine seniority rights of employees.

The question as to finality of a decision of an adjustment board has not been definitely decided by the Supreme Court. However, it should be noted that in *Elgin, J. & E. Ry.* v. *Burley*, 325 U. S. 711 (1945), the majority of the Court specifically reserved the question of finality as being unnecessary for decision in the case (325 U. S. 720 and

749), and the four dissenting justices stated positively their belief that the denial of a money award by an adjustment board is final and is not subject to judicial review (325 U. S. 760-761). It should be further noted that the majority opinion in that case was written by Mr. Justice Rutledge who, as a member of the Court of Appeals for the District of Columbia, said in *Washington Terminal Co.* v. *Boswell*, 124 F. 2d 235, 244 (App. D. C. 1941), affirmed by equally divided court, 319 U. S. 732 (1943), that "The *Moore* decision holds that Congress has not compelled disputants to go before the Board. It does not hold that, having gone, they can disregard the award and its consequences at will." The virtually unanimous decisions of other courts that submission of a claim to an adjustment board is an election of remedies which bars court action is wholly consistent with the decisions of the Supreme Court holding that the courts should refrain from acting on labor relations disputes—and particularly matters such as Woolley's which require interpretation of collective bargaining agreements —as to which the Railway Labor Act provides an adequate procedure for settlement. See for example: *General Committee* v. *Southern Pacific Co.*, 320 U. S. 338 (1943); *General Committee* v. *Missouri-Kansas-Texas R.R.*, 320 U. S. 323 (1943); *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297 (1943); *Slocum* v. *Delaware, L. & W. R.R., supra; Order of Railway Conductors* v. *Southern Ry.*, 339 U. S. 255 (1950); *Order of Railway Conductors* v. *Pitney*, 326 U. S. 561 (1946).

While this Court has not directed its attention specifically to the problem here involved, the Court's decision in *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana Railroad*, 353 U. S. 30 (1957) indicates rather clearly that this Court considers an Adjustment Board decision to be conclusive. After referring to the pertinent

provisions of Section 3 of the Railway Labor Act, this Court had the following to say (353 U. S. 34):

> "This language is unequivocal. Congress has set up a tribunal to handle minor disputes which have not been resolved by the parties themselves. Awards of this Board are 'final and binding upon both parties.' And either side may submit the dispute to the Board."

Woolley appears to argue that he never had an opportunity to elect his remedy (Court action for wrongful discharge, or Adjustment Board for reinstatement and back pay), and that because of the lack of opportunity for election of remedies, the decision of the Adjustment Board was void and of no effect. Woolley argues that "no specific charges" were filed against him and therefore he was in no position to make an election. Of course, it appears clearly from the record that Woolley received notice of specific charges against him (R. 368). He fully understood that his employment had been terminated, and requested a hearing as provided by the contract in case of dismissal (R. 367). Woolley further appealed from such termination to the Adjustment Board and submitted the entire issue as to the validity of such termination to that Board.

The time for election of remedies in a case of this type under the Railway Labor Act is now well-settled. An analysis of the numerous decisions dealing with the question indicates that the election must be made, in some cases, *after* exhaustion of intra-company grievance procedures, and may be made, in some cases, before exhaustion of intra-company grievance procedures, but in *all* cases *must* be made *before* appeal to the Adjustment Board. See the following decisions:

> *Kelly* v. *Nashville, C. & St. L. Ry.*, 15 Labor Cases 64,746 (E. D. Tenn. 1948);

Wilson v. *St. Louis-S. F. Ry.*, 247 S. W. 2d 644 (Mo. 1952);
Keel v. *Illinois Terminal R.R.*, 346 Ill. App. 169, 104 N. E. 2d 659 (1952);
Transcontinental & Western Air v. *Koppal*, 345 U. S. 653 (1953);
Mayfield v. *Thompson*, 262 S. W. 2d 157 (Kansas City Ct. of App. 1953);
Ringle v. *Transcontinental & Western Air*, 113 F. Supp. 697 (W. D. Mo. July 27, 1953);
Bower v. *Eastern Air Lines*, 214 F. 2d 623, 626 (3rd Cir. 1954), *cert. denied*, 348 U. S. 871 (1954).

Woolley relies upon the decision of *Rychlik* v. *Pennsylvania Railroad Company*, 229 F. 2d 171 (2d Cir. 1956), *reversed on other grounds*, *Pennsylvania Railroad Company* v. *Rychlik*, 352 U. S. 480 (1957). The Court of Appeals held that there could be review of a decision of an Adjustment Board made up of those whose interests squarely conflicted with those of the aggrieved employee. Here, no suggestion of conflict of interest has been, or could be, made. The Supreme Court reversed on other grounds and did not consider the question which the Court of Appeals had decided. However, in a concurring opinion, Mr. Justice Frankfurter made the following statement which is pertinent to the present case (77 Sup. Ct. p. 431):

> "The determination of the System Board on the merits is not open to judicial review, even on so-called legal questions. It is not for a court to say that a complaint against the System Board must fail because the System Board rightly held against the complainant. Right or wrong, a court has no jurisdiction to review what the System Board did . . ."

Similarly, the case of *Edwards* v. *Capital Airlines, Inc.*, 176 F. 2d 755 (D. C. Cir. 1949) does not aid Woolley. In that case also there was a direct conflict of interest between

the aggrieved employees and the members of the Adjustment Board. Holding that there could be limited judicial review in that case, the court was very careful to limit the scope of its decision, stating (176 F. 2d 762):

> "To emphasize the narrow limits of our present ruling, we point out that we are not dealing with a case where there was merely a dispute between a company and its employees, in which the union represented the employees; or with one in which the union assumed a bona fide neutral position in a dispute between employees. This case, we repeat for emphasis, concerns the rights of a few non-members of a union in a proceeding in which the union aggressively presented and pressed the claims of its members adverse to the claims of these appellant non-members, under a contract negotiated by the union, and before a board upon which two of the four members were union representatives."

All of the above authorities establish beyond question that Woolley has made an irrevocable election of the Adjustment Board remedy, is bound by the adverse decision of the Adjustment Board, and had no right to present the same issues again to the trial Court.

IV.

Woolley's resignation and the acceptance thereof were valid and effective, and the Adjustment Board properly upheld the acceptance of the resignation.

Woolley appears to contend that he did not submit to the Adjustment Board the issue as to validity of the resignation, but that he challenged the jurisdiction of the Adjustment Board to decide such an issue. As shown in the record of this case, Woolley actually requested the Adjustment Board to decide *all* questions relating to the

legality of his separation from his employment, and he specifically requested the Board to hold that the resignation was improper and illegal (R. 363-365, R. 102-104). Thus, there clearly is no merit in Woolley's present suggestion that any action or protest of his before the Adjustment Board deprived that Board of jurisdiction.

Woolley suggests (R. 9) that the resignation "contravened both the letter and the spirit of the Railway Labor Act and the spirit and letter of the right protected and guaranteed to plaintiff under the provisions of the laws of the United States" as well as the contract itself. It is impossible to ascertain what provision of what law Woolley thinks has been violated. No law prohibits an employee from resigning or an employer from accepting his resignation. The Railway Labor Act does not prescribe any set procedure whereby an employee's services may be terminated. It simply provides (Section 204, 45 U. S. C. 184) that disputes and grievances "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes," and "may" thereafter be appealed to the Adjustment Board. Woolley's 1950 grievance was "handled in the usual manner" and the ultimate decision of the chief operating officer was accepted by Woolley and his bargaining representatives. Even the nature of the settlement was "usual" as shown by Mr. Shannon's affidavit appended to the Answer of Eastern *et al.* in the District Court (R. 348).

The Railway Labor Act does not set up any code of conduct or procedure which might be deemed to prohibit either the 1950 settlement of Woolley's grievance or his resignation which was a part of that settlement.

In *Hetterbaugh* v. *Air Line Pilots Association*, 189 F. 2d 319, 321 (5th Cir. 1951), the Court had the following to say on this subject:

"As stated by the Supreme Court in Terminal Railroad Ass'n of St. Louis v. Brotherhood of Railroad Trainmen, 318 U. S. 1, at page 6, 63 S. Ct. 420, at page 423, 87 L. Ed. 571: 'The Railway Labor Act, like the National Labor Relations Act [29 U. S. C. A. §151 et seq.] does not undertake governmental regulation of wages, hours, or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those Acts is not primarily in the working conditions as such. So far as the Act itself is concerned these conditions may be as bad as the employees will tolerate or be made as good as they can bargain for. The Act does not fix and does not authorize anyone to fix generally applicable standards for working conditions. The federal interest that is fostered is to see that disagreement about conditions does not reach the point of interfering with interstate commerce.'

"There is no allegation here that the bargaining agreement between the parties discriminated against the appellants. At most, there is an allegation of a breach of the bargaining agreement. Any right of action, if one exists, is based on the alleged breach of the bargaining agreement, and does not arise under the Railway Labor Act, but only from the consequent contractual relations of the parties. The federal courts are not charged by federal law with the duty of policing parties in the performance of collective bargaining agreements entered into pursuant to the Railway Labor Act. See Hayes v. Union Pac. R. Co., 9 Cir., 184 F. 2d 337."

It should be emphasized that the 1950 settlement, of which Woolley's resignation was a part, was negotiated *by the collective bargaining representative*, certificated under the Railway Labor Act, and was *accepted by Woolley himself*. To the extent that Woolley was thereafter subject to different terms and conditions than other pilots, insofar as separation from employment is concerned, he has no grounds for complaint, as he consented to those conditions.

and it has been held repeatedly that collectively-negotiated agreements need not affect all individuals and classes alike. *Virginian Railway* v. *System Federation No. 40*, 300 U. S. 515, 548-549 (1937); *Ford Motor Co.* v. *Huffman*, 345 U. S. 330 (1943); and *Pellicer* v. *Brotherhood of Railway Clerks*, 118 F. Supp. 254 (S. D. Fla. 1953), *affirmed*, 217 F. 2d 205 (5th Cir. 1954).

But even if there were thought to be in this case a serious issue as to whether the resignation "contravened both the letter and the spirit of the Railway Labor Act", that issue was freely and fully presented by Woolley to the Adjustment Board, was within its jurisdiction, and was decided by it in a way which is binding on him. As stated by Chief Judge Parker in *Alabaugh* v. *Baltimore & Ohio R.R.*, 222 F. 2d 861, 866 (4th Cir. 1955):

> "There is no reason why the Board should not consider all rights, statutory and constitutional as well as others, in making its determination."

The cases cited by Woolley purporting to show that his resignation was invalid are believed to be completely irrelevant. Cases under civil service or tenure laws obviously have no relationship to this case, as there is no declared statutory public policy applicable to this case which requires any set procedure or grounds for termination of employment.

Is there anything in the collective contract which prohibits the resignation here involved? Woolley appears to rely on Section 29 A of the contract which states that "A pilot shall not be disciplined or dismissed from the Company without notification in writing . . . and . . . without an investigation and hearing" if the pilot so requests. If that provision is deemed to apply to the resignation here involved—on the theory that it was a "dismissal", as Wool

ley apparently contends—it quite clearly has been complied with. Woolley was given written notice of the Company's action. He was also given an investigation and hearing at his request. He has recognized the regularity of the proceedings in many ways, including his appeal to the Adjustment Board.

The contrac. does not *specify* that discharge may occur only for "cause", and to the extent that the requirement of "cause" may be implied from the hearing procedures, the contract certainly does *not* say what quality or degree of "cause" may be required in any case. That is, of course, a matter for interpretation and decision by the Adjustment Board in cases referred to it.

Here, the Adjustment Board has held that the Company had "good and sufficient reasons" for separating Woolley from the employment. That finding surely is adequate to meet any implied requirement that the Company have "cause" for separating the employee.

Woolley appears to suggest (Petition, pp. 23-24) that the letter of resignation authorized a discharge without cause. The Adjustment Board found to the contrary, for it stated (R. 88):

> "2. That the letter of resignation . . . was intended by all involved . . . to be accepted by the Company for good and sufficient reasons but not arbitrarily or capriciously."

The evidence clearly supports that finding. Thus, if the contract were deemed to prohibit an arbitrary or capricious "dismissal by acceptance of a resignation" or any separation without "cause", the transaction here involved is not prohibited but meets every conceivable required standard.

Woolley states (Petition, p. 28) that a resignation such as Woolley's is a "nullity". We have found no pertinent au-

thority which would suggest such a conclusion. The Railroad Adjustment Board case cited by Woolley (Petition, p. 23) simply holds that where, *contrary to the accepted practice,* a resignation was used *immediately* to sever the employment after impliedly representing to the employee that he could continue indefinitely as had always been true with other employees who signed similar resignations, the employer was guilty of bad faith and trickery and the resignation could not be upheld. Certainly no such suggestion could be made in this case, where Woolley was allowed to remain on the payroll for nearly six years and then severed only for "good and sufficient reasons."

The applicable statute and contract plainly permit the type of separation here involved and the Adjustment Board had jurisdiction to determine that issue.

CONCLUSION

The Adjustment Board had full power and jurisdiction to determine the questions submitted to it by Woolley in his appeal to that Board. Woolley voluntarily submitted the case to the Adjustment Board, and such submission constituted an irrevocable election of the Adjustment Board remedy which precludes court action. Moreover, even if the decision of the Adjustment Board were reviewable, it is clear that that decision was right.

Petitioner has presented no grounds for the granting of certiorari, as the legal principles followed by the lower court are well established and no important Federal question is raised which needs to be settled by this Court. Therefore, the petition for writ of certiorari should be denied.

Position of Other Respondents

Respondents Air Line Pilots Association, R. W. Rivenbark and R. M. Tedlock are not filing a separate brief in opposition to the petition for writ of certiorari. The foregoing brief has been submitted to such Respondents in draft form, and we are authorized to state that Respondents Air Line Pilots Association, R. W. Rivenbark and R. M. Tedlock concur in the conclusions stated in the foregoing brief.

Respectfully submitted,

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March 28, 1958

CERTIFICATE OF SERVICE

I hereby certify that copy of the foregoing brief has been served on:

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by depositing same in a United States post office, with first class air mail postage prepaid, addressed to such counsel at the addresses indicated. This 28th day of March, 1958.

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